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Derek Murashige

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/662,998
Filing Date: September 16, 2003
Appellant(s): MURASHIGE ET AL.

Stewart J. Womack

For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed December 31, 2008, appealing from the Office action mailed May 21, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0261023	Bier	06-2003
2002/0035611	Dooley	12-2000
2004/0068460	Feeley	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 25-32,34-43, and 45, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bier (US Patent Application No. 20040261023) provisional filed**

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June 20, 2003, in view of Dooley (US Patent Application No. 20020035611) filed on December 28, 2000.

Regarding Claim 25, Bier discloses a program for increasing traffic flow to a Web site, comprising:

a means for receiving access to a Web site code, wherein a Web site comprises the Web site code ([0066], Bier). However, Bier is silent with respect to a means for receiving a list of one or more search engines to submit the Web site to for registration. On the other hand, Dooley discloses a means for receiving a list of one or more search engines to submit the Web site to for registration ([0056], lines 27-46, Dooley)¹. Bier and Dooley are analogous art because they are from the same field of the organization of information on the Internet. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Dooley's teachings into the Bier system. A skilled artisan would have been motivated to combine as suggested by Dooley at [0010], in order to provide an information network on the Internet, wherein the information, products, and services of a website will be accessed in order to provide value to the website owner. As a result, obtaining high volume traffic at the least cost per visitor.

Therefore, the combination of Bier in view of Dooley, disclose a means for analyzing the Web site code, wherein the means for analyzing the Web site code comprises a means for checking for a known factor in the Web site code used by

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a plurality of search engines in ranking a plurality of Web sites for registration ([0056], lines 36-46, Dooley); a means for causing the Web site code to be edited based on a result from the means for analyzing the Web site code ([0081], Bier); and a means for submitting the Web site, with the edited Web site code ([0192], Bier), for registration to the one or more search engines on the list ([0050], lines 12-18, Dooley).

Regarding Claim 26, the combination of Bier in view of Dooley, disclose the program wherein the means for causing the Web site code to be edited comprises manually editing the Web site code ([0155], Bier).

Regarding Claim 27, the combination of Bier in view of Dooley, disclose the program wherein the means for causing the Web site code to be edited comprises the program automatically editing the Web site code ([0014], Bier).

Regarding Claim 28, the combination of Bier in view of Dooley, disclose the program wherein the means for analyzing the Web site code further comprises a means for parsing through the Web site code ([0081], Bier).

¹ Examiner Notes: An example of a list of one or more search engines are shown within Dooley at [0050], lines 8-11.

Regarding Claim 29, the combination of Bier in view of Dooley, disclose the program further comprising a means for receiving a search phrase ([0046], lines 2-11, Dooley).

Regarding Claim 30, the combination of Bier in view of Dooley, disclose the program further comprising a means for automatically generating a search phrase for the Web site ([0051], Dooley).

Regarding Claim 31, the combination of Bier in view of Dooley, disclose the program wherein the means for analyzing the Web site code further comprises a means for reviewing the Web site for compatibility with a search phrase ([0046], Dooley).

Regarding Claim 32, the combination of Bier in view of Dooley, disclose the program wherein the means for analyzing the Web site code further comprises a means for reviewing a textual content of the Web site ([0008], Bier).

Regarding Claim 34, the combination of Bier in view of Dooley, disclose the program wherein the means for analyzing the Web site code further comprises a means for checking for a framed web page within the Web site ([0078], Bier).

Regarding Claim 35, the combination of Bier in view of Dooley, disclose the program wherein the means for analyzing the Web site code further comprises a means for checking for a graphic used to display a textual content ([0038], Dooley).

Regarding Claim 36, the combination of Bier in view of Dooley, disclose a process for increasing traffic flow to a Web site from one or more search engines, comprising the steps of:

- a program receiving access to review a Web site ([0066], Bier), wherein a Web site code defines how a plurality of Web pages for the Web site will be displayed by a browser ([0078-0079], Bier);

- the program receiving a list of one or more search engines to submit the Web site to for registration ([0056], lines 27-46, Dooley);

- the program analyzing the Web site code ([0056], lines 36-46, Dooley);

- the program facilitating a modification of the Web site code based on the analyzing of the Web site code ([0081], Bier) in order to increase a traffic flow to the Web site from at least one of the search engines on the list ([0027], Dooley);

and

- the program submitting the Web site for registration, having the modified Web site code ([0192], Bier), to the one or more search engines ([0050], lines 12-18, Dooley).

Regarding Claim 37, the combination of Bier in view of Dooley, disclose the process wherein the facilitating includes the step of the program listing a plurality of suggested edits to manually edit the Web site code ([0155], Bier).

Regarding Claim 38, the combination of Bier in view of Dooley, disclose the process wherein the facilitating includes the step of the program automatically modifying the Web site code ([0014], Bier).

Regarding Claim 39, the combination of Bier in view of Dooley, disclose the process wherein the program resides on a third party server accessible by an owner of the Web site ([0041], Dooley).

Regarding Claim 40, the combination of Bier in view of Dooley, disclose the process wherein the program resides on a personal computer accessible by an owner of the Web site ([0050], lines 1-8, Dooley).

Regarding Claim 41, the combination of Bier in view of Dooley, disclose the process further comprising the step of the program receiving at least one search phrase from an owner of the Web site ([0046], lines 2-11, Dooley).

Regarding Claim 42, the combination of Bier in view of Dooley, disclose the process further comprising the step of the program determining at least one search phrase ([0051], Dooley).

Regarding Claim 43, the combination of Bier in view of Dooley, disclose the process further comprising the step of the program receiving at least one search phrase from a search phrase suggestion tool ([0055], Dooley).

Regarding Claim 45, the combination of Bier in view of Dooley, disclose the process wherein the Web site code comprises HyperText Markup Language ([0066], Bier).

3. Claims 33,44, and 46-63, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bier (US Patent Application No. 20040261023) provisional filed June 20, 2003, in view of Dooley (US Patent Application No. 20020035611) filed on December 28, 2000, as applied to claims 25-32,34-43, and 45 above, and further in view of Feeley (US Patent Application No. 20040068460) filed October 2, 2002.

Regarding Claims 33 and 44, the combination of Bier in view of Dooley, disclose all of the claimed subject matter as stated above. However, Bier in view of Dooley, are silent with respect a means for determining a spiderability of the Web site. On the other hand, Feeley discloses a means for determining a

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spiderability of the Web site ([0024], lines 8-13, Feeley). Bier, Dooley, and Feeley are analogous art because they are from the same field of endeavor of Internet search engines. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Feeley's teachings into the Bier in view of Dooley system. A skilled artisan would have been motivated to combine as suggested by Feeley at [0029], lines 1-8, in order to provide a convenient way for advertisers to maximize qualified consumer traffic to their web sites, and for search engines to increase their revenue stream.

Regarding Claims 46,55, and 56, the combination of Bier in view of Dooley, and further in view Feeley, disclose a process for increasing traffic flow to a Web site from a search engine, comprising the steps of:

a program receiving access to review a Web site, wherein the Web site comprises a Web site code ([0066], Bier), wherein at least some of the Web site code defines how the Web site is to be displayed by a browser ([0078-0079], Bier);

the program receiving a first search phrase related to the Web site ([0046], Dooley);

the program receiving a list of one or more search engines to submit the Web site to for registration ([0056], lines 27-46, Dooley);

the program determining a ranking methodology used by at least one of the search engines on the list ([0023], lines 10-22, Feeley);

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the program analyzing the Web site code using the determined ranking methodology ([0056], lines 36-46, Dooley);

the program facilitating a modification of the Web site code based on the analyzing the Web site code ([0081], Bier) to increase an expected traffic flow to the Web site from the search engine ([0027], Dooley); and

the program submitting the Web site for registration, having a modified Web site code ([0192], Bier), to the one or more search engines on the list ([0050], lines 12-18, Dooley).

Regarding Claims 47 and 57, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the facilitating includes the step of the program listing suggested edits to manually modify the Web site code ([0155], Bier).

Regarding Claim 48, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process further including the step of the program automatically modifying the Web site code ([0014], Bier).

Regarding Claims 49 and 58, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the program resides on a third party server accessible by an owner of the Web site ([0041], Dooley).

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Regarding Claims 50 and 59, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the program resides on a personal computer accessible by an owner of the Web site ([0050], lines 1-8, Dooley).

Regarding Claims 51 and 60, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the first search phrase is entered by an owner of the Web site ([0025], lines 2-10, Feeley), and further comprising the step of the program determining a second search phrase ([0025], lines 10-14, Feeley).

Regarding Claims 52 and 61, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the first search phrase is entered by an owner of the Web site ([0025], lines 2-10, Feeley), and further comprising the step of receiving a second search phrase from a search phrase suggestion tool ([0055], Dooley).

Regarding Claims 53 and 62, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the analyzing the Web site code step includes checking a spiderability of the Web site code ([0024], lines 8-13, Feeley).

Regarding Claims 54 and 63, the combination of Bier in view of Dooley, and further in view Feeley, disclose the process wherein the analyzing the Web site code step includes checking for a search engine parsing problem in the Web site code ([0048], lines 1-9, Dooley).

(10) Response to Argument

Appellant argues, it would not have been obvious to combine Bier and Dooley.

Examiner respectfully disagrees. In response to applicant's argument that Bier is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bier is definitely pertinent to the particular problem with which it was relied upon as a basis for rejection of the claim language, which is to primarily show the use of receiving access to a Web site code, wherein the Web site comprises the Web site code. Further, in response to applicant's argument that the proposed modifications from Dooley to Bier would render Bier unsatisfactory for its intended purpose is improper. The test is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the

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references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Therefore, the examiner strongly believes that the incorporation would provide an information network on the Internet, wherein the information, products, and services of a website will be accessed in order to provide value to the website owner. As a result, obtaining high volume traffic at the least cost per visitor.

Independent Claim 25:

Appellant argues, Bier does not disclose a program for increasing traffic flow to a Web site.

Examiner respectfully disagrees. In response to appellant's arguments, the recitation "a program for increasing traffic flow to a Web site" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In particular, the examiner believes that the preamble is merely reciting a purpose of the invention and the actual claim limitations are what are showing how the traffic flow to a Web site can be increased. Thus, appellant's argument that Bier does not disclose the

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above argues preamble is invalid. However, for arguments sake, Dooley teaches that their invention is to increase the potential of obtaining high volume Internet traffic (see [0017], lines 26-47). Lastly, also for arguments sake, the appellant's specification defines the program used within the invention to correspond to a browser (see [0003]). Both Bier and Dooley discuss the use of a browser for the implementation of the invention. In particular, Bier teaches using the browser for the conversion of a web page (see [0058] and [0060]). Dooley teaches the use of the browser for entering a domain name or URL, as well as selecting an entry for a Web site (see [0050-0051]).

Appellant argues, Dooley does not disclose a program means for receiving a list of search engines.

Examiner respectfully disagrees. To begin, the appellant must remember to stay consistent with the claim language as it is stated within the last correspondence. In particular, the claim language states "a means for receiving a list of one or more search engines". The appellant's argument that the reference fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a program means for receiving a list of search engines) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed.Cir.1993). However, the examiner would like to point out that both Bier and Dooley discuss "a program" throughout their descriptions. In particular, Bier discusses at paragraph [0066], wherein "*Fig.3 illustrates an embodiment of source code...lines of*

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code include: optional HTML document structure tags...” as well as Dooley discussing within paragraph [0023], wherein “*programs and data, many in the form of objects, may be made available for execution and access*”. As a result, examiner interprets the above-cited passages as fully disclosing, “a program comprising”. More specifically, Dooley was relied upon for the rejection of a means for receiving a list of search engines, wherein “*In one embodiment, enhanced placement may be affected by registration of website URLs with Internet search engines or brokers on their behalf*” ([0056], lines 27-47, Dooley), along with an Examiner Note located within the Footnote, indicating an example of a list of possible one or more search engines at paragraph [0050], lines 8-11, wherein “*The user may also access a conventional search engine or browser (e.g., google.com, yahoo.com, netscape.com, northerlight.com, etc.) and enter a search request*”. The examiner interprets the accessing of a conventional search engine to correspond to the act of receiving, and since there is only one search engine being accessed (i.e., received), then the search engine is produced. Also, paragraph [0050] gives an example of a plurality of different search engines that would be produced in order to submit the Web site to. Thus, it would be obvious to one of ordinary skill in the art to understand that 1) if the reference allows the receiving of one search engine and the reference also list examples of a plurality of other search engines; then it is understood that a list of one or more search engines can be received also. However, the minimum requirement of receiving 'one' search engine is in fact met. A further example for this particular limitation can be found within Dooley at paragraph [0066], lines 5-15, wherein “*The major groupings of advantageous features of the information network of the present invention include...registration of websites with search engines*”; examiner interprets the registration with search engines to further disclose the above argued limitation.

Appellant argues, Dooley's including software code into a website design is not the same as a means or program for analyzing Web site code.

Examiner respectfully disagrees. To begin, the examiner would again like to point out the fact that the actual claim language states "a means for analyzing the Web site code", and not 'a program for'. Next, Dooley teaches the search engine including a parsing feature that permits searching of concatenated or hyphenated domain names, wherein the search engines software codes are with the parsing capabilities and are used with this invention ([0048], Dooley). An example of such is the domain name "hairstimulant.com", wherein there are two discrete terms 'hair' and 'stimulant', but that may not be recognized if the code was not programmed with such feature. Thus showing an analysis of the Web site code. Even further, Dooley teaches wherein "*In another embodiment, enhanced placement may be attained by the inclusion of a variety of additional software code elements (e.g., Java applets, cookies, and other elements) within the website(s) design, which may be weighted favorably by search engines*" ([0056], lines 36-46). Examiner interprets the 'attaining by the inclusion of a variety of additional software code elements' to correspond to the analysis of the Web site code because the placement of the described elements provides for an enhanced placement of the Web site, thus generating higher traffic.

Independent Claim 36:

Appellant argues, Dooley does not teach the program receiving a list of one or more search engines.

Examiner respectfully disagrees. Appellant's arguments have been addressed with relation to claim 25 above.

Appellant argues, neither Dooley nor Bier teach a program facilitating a modification of the Web site code to increase traffic flow.

Examiner respectfully disagrees. Bier discloses at paragraph [0081], wherein *"the method for converting input web pages to Sparrow Web type web pages...where the web page coding is detected and revised...the revised web page code is parsed into tokens...some tokens in the parsed revised web page code are marked as candidates to be included in editable regions"*. Examiner interprets the converting input web pages into Sparrow web pages where the coding is revised to correspond to facilitating a modification of the Web site code. Next, Dooley discloses at paragraph [0027], wherein *"Not only may multiple hyperlinks into a website drive traffic into it, but multiple hyperlinks within a website are likely to be weighted (favorably) by some Internet search engine algorithms...In addition, the information network may provide high volume traffic, due to synergy of the information network with a plurality of websites, domain names, and URL redirects, such that the traffic volume may be positively recognized and weighted favorable by some Internet search engines"*. Examiner interprets the multiple hyperlinks and redirects, which drive traffic into websites as corresponding to the increase in traffic flow. Even further, Dooley discloses at paragraph [0056], lines 34-41, wherein *"enhanced placement may be affected by search engines recognition of established high volume traffic into a given website, regardless of how that traffic was generated...enhanced placement may be attained by the inclusion of a variety of additional software code elements (e.g., Java applets, cookies, and other elements) within the websites design, which may be weighted favorable by search engines"*. As such, examiner interprets the inclusion of a variety of additional software code elements for enhanced placement in order to

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establish high volume traffic to correspond to the facilitation of a modification of the Web site code as a way of increasing traffic. Lastly, as stated previously, an example of a program as defined by appellant's own specification, is a browser (see [0003]), and Dooley clearly teaches the use of a browser in order to implement the system (see [0050-0051], Dooley).

Appellant argues, neither Dooley nor Bier teach the program submitting the Web site for registration.

Examiner respectfully disagrees. Dooley discloses at paragraph [0050], lines 12-18, wherein "*The search engine may identify relevant websites that have been registered with or located by the particular search engine, and may return this search results list to the user*". Examiner interprets the identifying of relevant websites that have been registered as demonstrating that the website at one point in time had to have been submitted for registration in order for the site to already be registered. To further support the above argued limitation, Dooley disclose at paragraph [0031], wherein "*the selected domain names may be registered, purchased, and/or leased from the current owner*", and paragraph [0056], lines 27-29, wherein "*enhanced placement may be affected by registration of website URLs with Internet search engines or brokers on their behalf*". Examiner interprets the above citations to correspond to the argued limitation and in particular since the websites are up for registration it is evident that they have been submitted. Lastly, as stated previously, an example of a program as defined by appellant's own specification, is a browser (see [0003]), and Dooley clearly teaches the use of a browser in order to implement the system (see [0050-0051], Dooley).

Independent Claims 46, 55, and 56:

Appellant argues, Dooley does not teach the program receiving a list of one or more search engines to submit the Web site to for registration.

Examiner respectfully disagrees. Appellant's arguments have been addressed with relation to independent claims 25 and 36 above.

Appellant argues, Dooley does not teach a program analyzing the Web site code using the determined ranking methodology.

Examiner respectfully disagrees. To begin, the objective of the Dooley reference is essentially based on a ranking methodology, as discussed within paragraph [0016], wherein *"According to another embodiment of the present invention, a method for enhancing a probability of high placement of a webpage by a search engine is provided"* and paragraph [0017], wherein *"It is another technical advantage of the present invention to increase the likelihood that member websites receive high rankings from Internet search engines"*. Further, paragraph [0056], lines 1-6, disclose *"a combination of elements or features of the website design may be utilized to enhance high level placement of the member websites or web pages within search engine results"*. Examiner interprets the enhanced high-level placement to correspond to the determination of a ranking methodology. Also, paragraph [0056], lines 36-40, discloses *"enhanced placement may be attained by the inclusion of a variety of software code elements within the websites design, which may be weighted favorably by search engines"*. As such, examiner further interprets favorable weighting by the search engine as disclosing a determination of a

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ranking methodology. Lastly, it is obvious within the art at the time of the invention that determining a ranking method is a form of analysis for Web site code and other forms of Web site code analysis has been taught (see above), thus making it more understandable that one would alter the reference to allow for a ranking analysis as well.

Appellant argues, Bier does not teach a program facilitating a modification of the Web site code to increase an expected traffic flow to the Web site.

Examiner respectfully disagrees. Appellant's arguments have been addressed with relation to independent claim 36 above.

Appellant argues, Dooley does not teach the program submitting the Web site for registration.

Examiner respectfully disagrees. Appellant's arguments have been addressed with relation to independent claim 36 above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,
CLD

April 9, 2009

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